

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CrI.A.No.334 of 2000

Umarani

.. Appellant/Complainant

vs.

Velan

.. Respondent/Accused

Prayer: This appeal under section 378 Cr.PC has been preferred against order of Acquittal dated 10.01.2000, in C.A.No.16 of 1998, passed by the II Additional Sessions Judge, Pondicherry, reversing the Judgment in STR.No.114 of 1997 dated 2815/1988 on the file of the Court of Chief Judicial Magistrate, Pondicherry.

For Appellant : Mr.N.Baskaran

For Respondent : Mr.M.Deivanandam

JUDGMENT

This appeal has been preferred against Judgment in C.A.No.16 of 1998 on the file of the II Additional Sessions Judge, Pondicherry. The appellant is the complainant. A private complaint was preferred by the complainant under Section 200 of Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act against the accused.

2. The averments in the complaint in a nutshell is that the accused after borrowing a sum of Rs.35,000/- as a hand loan and also another sum of Rs.15,000/- in the business transaction ie. for the purchase of cloths from the complainant and that in discharge of the said debt the accused had issued five cheques dated 10.2.1996 and when the cheques were presented in the bank they were dishonoured on the ground that there was no sufficient funds in the accounts of the drawer. Hence, the complaint.

3. Before the trial Court the complainant was examined as P.W.1 and Ex.Ps.1 to 13 were marked. The learned trial Judge after going through the oral and documentary evidence and after getting himself satisfied as to the guilt against the accused has been

proved beyond any reasonable doubt for an offence under Section 138 of Negotiable Instruments Act, has convicted the accused and sentenced the accused to undergo simple imprisonment for one month and also slapped a fine of Rs.35,000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused preferred an appeal in C.A.No.16/1998 before the II Additional Sessions Judge, Pondicherry, who has allowed the appeal on the ground that the complainant has failed to present the cheque within six months as contemplated under Section 138(a) of Negotiable Instruments Act and also on the ground that there was no evidence to show that there was legally enforceable debt on the date of drawal of the cheque and consequently set aside the judgement of the trial judge thereby acquitting the accused. Against the said findings of the learned first appellate Court the complainant has preferred this appeal.

4. Now the point for determination in this appeal is whether the judgment of the first appellate Court in C.A.No.16/1998 is perverse in nature to warrant interference from this Court?

5. The Point:-

5(a) Admittedly Ex.P.2, Ex.P.4 Ex.P.6, Ex.P.8, Ex.P.10 cheques dated 28.2.1997 will go to show that those cheques were presented to the bank on 1.3.1997 itself. The reason given by the learned trial judge for allowing the appeal is that even though the cheques were dated 28.02.1997 they were admittedly handedover by the accused on 10.2.1996 itself as alleged in the private complainant.

5(b) The learned counsel for the appellant relied on 2006 (2) LW (Cr1.) 677 (A.Sreekantan Nair Vs. P.Valsarajan) and AIR 2001 SC 1161 (Shri Ishar Alloys Steels Ltd., Vs. Jayaswals NECO Ltd.,) and contended that for reckoning the period for a bounced cheque under Section 138(a) of the Negotiable Instruments Act, the date on which the cheque was drawn alone is to be taken into consideration to see whether the cheque was presented within six months from the date of drawal of the cheque and not the date of issuance of the cheque.

5(c) In 2006(2) LW (Cr1.) 677 (A.Sreekantan Nair Vs. P.Valsarajan) the case cited by the learned counsel for the appellant, the cheque was issued on 3.4.1998 but the cheque was dated 3.9.1998, wherein it has been held by the Honourable Apex Court that six months time will reckon only from the date of the cheque i.e, 3.9.1998 and not the date of the issuance of the cheque 3.4.1998. Even in AIR 2001 SC 1161 (Shri Ishar Alloys Steels Ltd., Vs. Jayaswals NECO Ltd.,) also the same principle was laid, i.e. the date of reckoning will commence only from the date on which the

cheque was drawn and not from the date on which the post dated cheque was issued. The exact observation in AIR 2001 SC 1161 (Shri Ishar Alloys Steels Ltd., Vs. Jayaswals NECO Ltd.,) runs as follows:-

"It has further to be noticed that to make an offence under Section 138 of the Act, it is mandatory that the cheque is presented to "the bank" within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. It is the cheque drawn which has to be presented to "the bank" within the period specified therein. When a post-dated cheque is written or drawn, it is only a bill of exchange. The post dated cheque becomes a cheque under the Act on the date which is written on the said cheque and the six months period has to be reckoned, for the purposes of Section 138 of the Act, from the said date."

So from the above dictum it is to be held that the first ground on which the learned first appellate judge has allowed the appeal will not stand for a moment.

5(d) The next ground on which the learned first appellate Court has allowed the appeal is that the complainant has failed to prove that on the date of drawl of cheque there was a legally enforceable debt in existence against the accused. The learned counsel for the appellant would contend that in the notice issued to the accused under Ex.P.12 the complainant has categorically stated that the accused owe Rs.15,000/- to the complainant in respect of the textile goods purchased on credit by the accused and another Rs.35,000/- was advanced as hand loan. For the said notice (Ex.P.12) which was received by the accused under Ex.P.13, there was no reply by the accused. The attitude of the accused in not sending any reply to the notice-Ex.P.12 received by him under Ex.P.13 itself will derive us to a conclusion go to show that the borrowing of the accused from the complainant has been proved.

5(e) Further P.W.1 has deposed before the trial Court to the effect that the accused had borrowed Rs.35,000/- and in the business transaction owes Rs.15,000/-. When the accused was apprised of the incriminating circumstances against him, he would say that he has placed the cheque leafs in his cousin brother Singaram's shop but they were stolen away and the said cheques were forged by P.W.1 for filing this private complaint. To prove this allegation the accused has not produced any evidence to show that he has preferred a complaint with police as soon as the cheques were found stolen away from the said Singaram's shop. Not even the said Singaram was examined as a defence witness to show that the

above said cheques were placed in his shop and that they were stolen away by someone. So the findings of the learned first appellate Judge in my considered opinion is perverse in nature requires interference from this Court. Point is answered accordingly.

6. In the result, the appeal is allowed and the judgment in C.A.No.16/1998 on the file of the II Additional Sessions Judge, Pondicherry, is set aside and the judgment of the trial Court in STR.No.114/1997 on the file of the Chief Judicial Magistrate, Pondicherry, is restored. The trial Court is directed to secure the accused to undergo the unexpended portion of the sentence and also to collect the fine amount imposed on him, if not collected already.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The II Additional Sessions Judge,
Pondicherry.
2. Do Thro The Sessions Judge,
Pondicherry.
3. The Chief Judicial Magistrate,
Pondicherry.

+ 1 cc to Mr. N. Baskaran, Advocate SR No. 14430

KLT (CO)
SR/15.3.2007

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